



GUILTY BEFORE PROVEN GUILTY

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Abstract

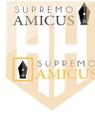
In the modern era of nationalism of 21st century the role of media has been considered important from the viewpoint that media is regarded as one of the pillars of the democracy. Media plays the most crucial and vital role in moulding the opinion of the society and has the ability to mould the viewpoint of whole society through which people perceive through certain happening and events. Media has always been justified in calling for the perpetrators to be punished by law without actually knowing the cause behind the development of such events. However, media cannot deviate from its objectivity and cannot seize the power as well as the function of Judiciary in imparting "Justice". The concept of media is important for free and democratic society and if media has been shackled by the government regulations is unhealthy for democracy. The strength and importance of media is well recognised in each and every sphere of life and for country like India it is essential that there exist free, independent and powerful media which at times has always been considered as the cornerstone of democracy. Media is not only the medium which expresses thoughts, emotions, opinions and views

but also act as a medium in building the thoughts and opinion of all, on various topics of regional, national and international agenda. The increased role of media was aptly put in the words by Justice Billings Learned Hand judge of the Supreme Court of America that "*The hand that rules The Press, The Radio, The Screen and the far spread Magazine, rules the country*". *Freedom of media is indeed the integral part but it must always be obligated to respect the rights of individuals so that the right of privacy of an individual is not infringed unnecessarily at any cost.*

Introduction

John Hofsess once said that "The demi-world of journalism is like the fun house of mirrors that one finds on carnival midways. In one reflection you are too fat, in another you are absurdly thin, in another reflection you appear to have an elongated neck, in another a flat head, in still another you have next to nobody. Yet there you are, standing in front of bizarre reflection, fully formed and hearing little resemblance to any of the images before you. The difference is however, that unlike the fun house of mirrors, the distortions of media are rarely a joke¹. The term "media" are composite of print, sound and electronic. Print media remain as powerful as ever long with newspapers, magazine, books, periodicals events etc. But electronic media offer a rich mix of that is available around the world. News of crime is always available and media starts giving

¹ 1 HERBERT ARLT & DONALD G. DAVIAU, LITERATURE AND THE FINE



its opinion even before the police interrogate the suspect at the scene of incident. Thus such crime news generates many legal problems for the media and accused, especially when overzealous media goes beyond its limit. In the past few years there are many instances in which media has conducted the trial of an accused and passed their verdict much before the court passes its judgement. This phenomenon is particularly known as Media trials. Some examples of media trials can be the Jessica Lal Murder case, Priyadarshini Matto, the Nitish Katara murder case and the Ayushi murder case. Such trial by media always creates an impression in the mind of people about the character of the parties to the case irrespective of the decision of the court. Thus between the advantage and disadvantage of the media trial, the debate about the constitutionality goes on.

Impact of Media Trial

1. Media trial v. Freedom of speech and expression.

In words of Blackstone “The liberty of press indeed essential to the nature of a free state. Every free man has an undoubted right to lay what sentiment he pleased before the public, to forbid this is to destroy the freedom of the press. But if be published what is improper,

mischievous or illegal he must take the consequence of his own temerity.”²

Freedom of speech and expression is always important and at many times played a crucial role in the formation of opinion, thoughts over religious, political, social and economical matters. The preamble of our Indian constitution provides liberty of thought, expression, belief, faith and worship. Justice Venktaramiah Judge of Supreme Court of India observed that “freedom of press is the heart of social and political intercourse. The press has assumed the role of the public educator making formal and non formal education possible in a large scale in developing the world. The purpose of the press is to advance the public interest by publishing facts and opinion without which a democratic electorate cannot make possible judgement³. The Supreme Court of India has also reiterated that freedom of press is not expressly guaranteed as a fundamental right but freedom of press has always been a cherished right in all democratic countries and has been considered as the fourth pillar of the democracy⁴. Therefore in the view of observation made by Supreme Court in different judgement it is a crystal clear that the freedom of the press flows from the freedom of speech and expression which is guaranteed under Article 19(1) (a).

² TRIAL BY MEDIA – LEGAL DILEMNA (Jan 1, 2018, 3:29 P.M) <http://www.knowyourlaw.com/trial-by-media-legal-dilemn/>

³ INDIAN EXPRESS NEWSPAPER (BOMBAY) (P) LTD. V. UNION OF INDIA. (1985) 1 S.C.C 641 P.664, PARA32 (INDIA).

⁴ PRINTERS (MYSORE) LTD. V. CTO (1994) 2 S.C.C 434(INDIA).



2. Media Trial v. Fair Trial

Trial by media has always created conflict because it is a war between two essential principles - Free media and Fair trial. The "Right to fair trial" is that trial which is uninfluenced and at the same time safeguards the rights of an individual mentioned under the Part III of the Indian Constitution. The trial by media is antithesis to the most celebrated phrase of the criminal law i.e. '*presumption of innocence until proven guilty*' and '*guilt beyond reasonable doubt*'. Media presumes accused guilty even before the trial begins and tries to impose its view on the general public. Judges are also the part of public and they can't remain immune from the aura created by the media against the accused. The Supreme Court of India explained that a "Fair trial would mean a trial before an impartial judge, a fair prosecutor and in the atmosphere of Judicial calm"⁵. Right to fair trial is an absolute right which is granted to the citizens of India under article 14, 20, 21, 22 of our Indian Constitution. Article 21 in its wide interpretation considered free and fair trial to be *sine qua non of Article 21*. The Supreme Court observed that "if the criminal is not free and fair and not free from bias, the judicial fairness is at stake, shaking the confidence of the public in the system and woe would be the rule of

law"⁶. The interpretation of article 21 has considered the Trial by media to be the very antithesis of the rule of law. The Honourable Supreme Court considered the trial by media as "when sensational criminal case comes to be tried before the court, public curiosity experiences an upsurge"⁷. Thus under Article 19(2) the right to have freedom of speech and expression is restricted by law only in the interest of sovereignty, security, integrity of India, security of state, friendly relations with foreign states, public order, decency, morality or in relation of contempt of court, defamation or incitement to an offence. Open Justice which is a facet of freedom of expression, permits fair and accurate reports of Court proceedings to be published. However, fair and accurate reporting of the trial might sometimes give rise to substantial risk so court can prohibit temporarily the publication of court proceedings under Article 19(2)⁸.

3. International Convention on Fair Trials.

The concept of fair trial is also recognised by the United Nations through different conventions that were passed. According to Section 6 of United Nations basic principles states that the judiciary is entitled and required "to ensure that the judicial proceedings are conducted fairly and the rights of parties are secured"⁹.

⁵ ZAHRA HABIBULLAH SHEIKH V. STATE OF GUJARAT (2005) 2 S.C.C 75(INDIA).

⁶ K. ANBAZHAGON V. SUPERINTENDENT OF POLICE A.I.R. 2004 S.C. 524(INDIA).

⁷ STATE OF MAHARASHTRA V. R.J GANDHI, A.I.R. 1997 S.C. 3986(INDIA).

⁸ SAHARA INDIA REAL ESTATE CORPORATION LTD. V. SECURITIES EXCHANGE BOARD OF INDIA A.I.R. 2012 S.C. 3829(INDIA).

⁹ UNITED NATIONS BASIC PRINCIPLES ON INDEPENDENCE OF JUDICIARY, G.A. RES. 146 AT 40TH SESSION(1985) ARTICLE 6



Article 19 of International Covenant on Civil and Political Rights confirms that freedom of expression is a fundamental part of democratic societies. It further elaborates that “everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information of all kinds in any form or any other media of his own choice”¹⁰.

Position in India;

There has been plethora of cases on the point of Fair trial. The Supreme Court of India through various interpretations has considered different view point on the concept of fair Trial. The Supreme Court observed that trial conducted by the press or electronic media is very antithesis to the rule of law. It can lead to miscarriage of justice. A judge has to guard himself against the pressure and is to be guided strictly by laws¹¹. The Honourable Supreme Court of India in the case of *Rajendra Sail vs. Madhya Pradesh High Court Bar Association and Others*¹² observed that *the rule of law and for orderly society, a free and responsible press and an independent Judiciary are both indispensable and both therefore have to be protected.*

4. Media Trial v. Contempt of Court.

Sometimes the trial by media gives rise to destroy the dignity of the court which may be referred as a contempt of court. This contempt can be civil and criminal. Thus in certain cases media interferes with judicial process. Thus the principle of natural justice “every accused has a right to fair trial” when clubbed with the principle that “Justice may not only done but seems to be done” give a right to the Media to have trial. But at many times this trial has been held unconstitutional by the Supreme Court of India. Chief Justice of Andhra Pradesh High Court Gopal Rao Ekkbote observed that “when litigation is pending before the court, no one shall comment on it in such a way that there is real and substantial danger of prejudice to the trial of the action, as for instance by influence on the Judge, the witnesses in general against the party to cause action”¹³.

5. Constitutionality of Media Trials.

***Freedom of Press;** The press as well as media has gained freedom from international conventions and charters as well. Article 19 of Covenant of Civil and Political Rights, 1966 embodies the right “that everyone shall have the right to hold opinions without interference” and the freedom to seek, receive, and impart information of all kinds in any form or through any media. But this freedom

¹⁰ ADOPTED AND OPENED FOR SIGNATURE, RATIFICATION AND ACCESSION BY GENERAL ASSEMBLY RESOLUTION (XXI) OF 16TH DECEMBER 1966. ENTERED INTO FORCE ON 23 MARCH 1976 IN ACCORDANCE WITH ARTICLE 49.

¹¹ *STATE OF MAHARASHTRA V. RAJENDRA JAWANMAL GANDHI* (1997) 8 S.C.C 386(INDIA).

¹² (2005) 6 S.C.C. 109(INDIA).

¹³ *Y.V. HANUMANTHA RAO V. K.R. PATTABHIRAM AND ANR*, A.I.R.1975 A.P. 30(INDIA).



comes under certain restrictions with special responsibilities and duties and is subjected to “right or reputation of others”. In *Re: Harijai Singh and Anr. And In Re: Vijay Kumar*¹⁴, The Supreme court held that the freedom of press can be recognized as, “an essential prerequisite of a democratic form of government” and regarded it as “the mother of all other liberties in a democratic society”. The Supreme Court of India in *Anukul Chandra Pradhan v. Union of India*¹⁵, observed that “No occasion should arise for an impression that the publicity attached to these matters (the hawala transactions) has tended to dilute the emphasis on the essentials of a fair trial and the basic principles of jurisprudence including the presumption of innocence of the accused unless found guilty at the end of the trial”

***Immunity under Contempt of court Act 1971;** Under the Contempt Of court act 1971, all the pre trials and publications conducted by press and media was held unconstitutional as they destroy the dignity of the court and more or less harm the reputation of the parties to the particular case. Thus any publication or pre trials that tend to obstruct the course of justice in connection with civil and criminal

proceeding which is pending in the court constitutes the contempt of court under section 3(2)(b) of this act. For example in the murder case of Ayushi Talwar¹⁶ the media came up with different reports like the character of the parties, strength of parties and with different evidences, which proved pre judicial to the case of the parties. In spite of this, these publications were granted immunity. This publication may harm the judicial system if they are not restricted to certain level.

The Public Right to Know; The Supreme Court of India has expounded the fundamental principle behind the freedom of press that is the people right to know the certain facts which still are unrevealed¹⁷. The Supreme Court observed that “The primary function therefore of the press is to provide comprehensive and objective information of all the aspect of country’s political, social, economic and cultural life. It has an educative and mobilising role to play in moulding public opinion¹⁸.”

200th Law Commission Report; The law commission in its 200th Report has referred a special reference towards “Trial by Media; Free Speech versus fair Trial under criminal Procedure (amendment to the contempt Of courts act 1971), has recommended a law to

¹⁴ (1996) 6 S.C.C. 466(INDIA).

¹⁵ 1996 (6) S.C..C 354(INDIA).

¹⁶ DR. RAJESH TALWAR AND ANOTHER V. CENTRAL BUREAU OF INVESTIGATION, 2013(82) A.C.C.303(INDIA).

¹⁷ A.G. V. TIMES NEWSPAPER, (1973) 3 ALL E.R. 54; EXPRESS PUBLICATIONS (MADURAI) LTD. V. UNION OF INDIA, A.I.R.

2004 S.C. 1950, PARA 29; SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, GOVT. OF INDIA V. CRICKET ASSOCIATION OF BENGAL, A.I.R. 1995 S.C. 1236, PARA 4.

¹⁸ IN RE: HARIJAI SINGH AND ANR. IN RE: VIJAY KUMAR, (1996) 6 S.C.C. 466, PARA 10(INDIA).



debar the media from reporting anything prejudicial to the rights of accused in a criminal case, from the time of arrest to investigation and trial. The commission in its report also said that “that there is a view of the extensive use of television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges in general administration of justice”¹⁹. The Supreme Court in the best bakery case²⁰ contended that the concept of fair trial is a constitutional imperative recognise under Article 14, 19, 21, 22 and 39(A) of the constitution of India. The Supreme Court in the Rajendra sail case²¹ observed that “for rule of law and orderly society, a free press and independent judiciary are both indispensable”.

Media Trial; A necessary evil. Trial by media has been regarded as necessary evil. But many big scams were uncovered by media and judiciary merely followed them up. One of the advantages of having strong and independent press is that people are now aware of their rights owing to the fact that these people are exposed to lot of information as being provided by media. But the fact remains that media in the 21st century are regulated by some other means and completely involved them in profit oriented business. The Supreme Court stated that it is acceptable that the media should be independent and free but they

can't come in the way of judiciary in exercising its function in the judicial process. Therefore it is in the media interest to ensure that the administration of justice is not undermined.

Conclusion

From the above account it is clear that modern media has more negative role to perform in the modern society in transforming the opinion of the people. Media has been entrusted with the right of freedom of speech and expression but they cannot be given free hand in exercising the function of judiciary. It is the moral duty of the media to acknowledge everything before publishing and moreover reveal the truth in each and every case rather than manipulating words for the business purpose. The most suitable way of restricting media from exercising trial is to exercise contempt of court those who violate the basic conduct of the court. The observation of Mr. Andrew Belsey in his article “Journalism and ethics” quoted by Delhi High Court²² aptly describe the state of affairs of today's media. He says that journalism and ethics stand apart. While journalistic are distinctive facilitators for the democratic process to function without hindrance the media has to follow the virtues of accuracy, honesty, truth, objectivity etc. But the practical considerations that is to be taken up are namely as pursuit of successful career, promotion to be obtained are recognised

¹⁹ 200TH LAW COMMISSION REPORT ON 3RD NOVEMBER 2006.

²⁰ (2005) 2 S.C.C. 75(INDIA).

²¹ (2005) 6 S.C.C. 109(INDIA).

²² *MOTHER DAIRY FOODS & PROCESSING LTD V. ZEE TELEFILMS 2005 (80) D.R.J. 74(INDIA).*



as the factors “for temptation to print trivial stories salaciously presented”. In the temptation to sell stories, ‘what is presented is what public is interested in’ rather than ‘what is in public interest’.

